



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KINDER MORGAN SOUTHEAST TERMINALS LLC
FOR**

**KINDER MORGAN SOUTHEAST TERMINALS LLC NEWINGTON #2
BULK PETROLEUM TERMINAL
REGISTRATION NO. 70234**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Kinder Morgan Southeast Terminals LLC regarding the Kinder Morgan Southeast Terminals LLC Newington #2 Bulk Petroleum Terminal for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "AST" means fixed-roof above ground storage (AST) tanks (equipped with an internal floating roof) for gasoline and/or ethanol products. The above ground storage tanks are subject to 40 CFR Part 60 Subpart Kb.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the Kinder Morgan Southeast Terminals LLC Newington #2 Bulk Petroleum Terminal, located at 8206 Terminal Road, Lorton, Virginia 22079, which is located in Fairfax County, Virginia.
7. "IFR" means Internal Floating Roof.
8. "Kinder Morgan" means Kinder Morgan Southeast Terminals LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Kinder Morgan Southeast Terminals LLC is a "person" within the meaning of Va. Code § 10.1-1300.
9. "MACT" means maximum available control technology.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
14. "Permit" means a Title V Federal Operating permit to operate a Bulk Petroleum Terminal which was issued under the Virginia Air Pollution Control Law and the Regulations to Kinder Morgan Southeast Terminals LLC on September 1, 2010, and amended on April 12, 2011, and February 10, 2012.
15. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VOC" means volatile organic compound.

19. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Kinder Morgan owns and operates the Facility in Lorton, Virginia. The Facility is the subject of the Permit which allows the Facility to operate pursuant to its terms.
2. On January 31, 2017, Kinder Morgan submitted to DEQ a Title V deviation report and a 2016 Semi-annual MACT 6B Report for the Facility.
3. The report stated that T01 and T03 ASTs were taken out of service for maintenance, on September 25, 2015 and October 30, 2014 respectfully. After the maintenance of the ASTs, Kinder Morgan did not reset the "maintenance leg" setting of the IFR support systems to operational positions resulting in off float conditions. Kinder Morgan reported an additional 0.12 tons of excess VOC emission resulting from the 24 off float events. Kinder Morgan also failed to identify the incorrect support system settings during annual visible inspections of the tanks. The IFRs were returned to the required operational setting for both ASTs on November 18, 2016.
4. Condition III.A.2.a of the Permit states that the IFR "shall rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible."
5. Condition III.B.2 of the Permit states that "Tanks with internal floating roofs shall be visually inspected annually. The inspections shall be made through available roof hatches and manholes located on the fixed roof of the tank. The internal floating roof, primary seal, and, as appropriate, the secondary seal shall be inspected. If the inspection reveals that the internal floating roof is not resting on the surface of the petroleum product inside the tank, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the cover or seal material, the owner/operator shall repair the items or empty and remove the tank from service within forty-five days. If a failure that is detected during the inspections required by this condition cannot be repaired within forty-five days, or if the tank cannot be emptied within forty-five days in order to make repair, a thirty day extension may be requested from the Regional Air Compliance Manager of the DEQ's NRO at the address referenced in Condition III.C."

"An extension request must be made in writing and certify that alternate storage capacity is unavailable and establish a schedule for completing the necessary repairs."

6. On June 21, 2017, based on the report, the Department issued a NOV (NOV No. ANRO000662) to Kinder Morgan for the violations described in paragraph C(3) above.
7. On July 24, 2017, Kinder Morgan met with DEQ to discuss the violations and proposal for a return to compliance.
8. On July 31, 2017, Kinder Morgan submitted to DEQ a copy of the revised operations and Maintenance (O&M) procedures for local management verification and tracking of the leg settings on external and internal floating roofs regarding tank service and repairs.
9. On August 10, 2017, Kinder Morgan submitted to DEQ additional details relating to the deviation event including the statement that there were 24 landings of the IFR on Tank 3 for a total of 40 days over the time period of the high tank leg operation.
10. Based on the results of review of the report, received by DEQ on January 31, 2017, and the July 24, 2017 meeting, the Board concludes that Kinder Morgan has violated Permit Conditions III.A.2.a and III.B.2, as described in paragraph C(3) above.
11. Kinder Morgan has submitted documentation that verifies that the violations described in paragraph C(3) above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Kinder Morgan, and Kinder Morgan agrees to pay a civil charge \$38,395.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Kinder Morgan shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Kinder Morgan shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Kinder Morgan for good cause shown by Kinder Morgan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Kinder Morgan admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Kinder Morgan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kinder Morgan declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kinder Morgan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kinder Morgan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Kinder Morgan shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kinder Morgan shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when

circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kinder Morgan. Nevertheless, Kinder Morgan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Kinder Morgan has completed all of the requirements of the Order;
 - b. Kinder Morgan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice Kinder Morgan.

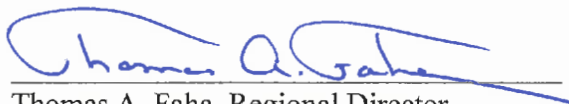
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kinder Morgan from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Kinder Morgan and approved by the Department pursuant to this Order are incorporated into this

Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Kinder Morgan certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kinder Morgan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kinder Morgan.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Kinder Morgan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2017.


Thomas A. Faha, Regional Director
Department of Environmental Quality

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Kinder Morgan Southeast Terminals LLC. voluntarily agrees to the issuance of this Order.

Date: 9-27-17 By: Robert McKinley, Operations Manager
(Person) (Title)
Kinder Morgan Southeast Terminals LLC

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this 27 day of SEPTEMBER, 2017, by ROBERT E. MCKINLEY who is THE
OPERATIONS MANAGER of Kinder Morgan Southeast Terminals LLC, on behalf of the
corporation.

Sabre A Reach
Notary Public

Registration No. _____

My commission expires: _____ Sabre A Reach
NOTARY PUBLIC
Cherokee County, GEORGIA
Notary seal: My Commission Expires June 21, 2019

